



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE  
DALLAS, TEXAS 75202-2733

31 JUL 2018

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (7014 2120 0003 8146 4063)

Mr. Chris Linendoll, E.I.T., Section Manager  
Wastewater Permitting Section (MC-148)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

Re: Withdrawal of Interim Objection Letter  
TPDES Permit No. TXR040000  
Small (Phase II) Municipal Separate Storm Sewer System (MS4) General Permit

Dear Mr. Linendoll:

Thank you for responding to the concerns raised in EPA's December 4, 2017, Interim Objection letter regarding the above referenced draft permit. Listed below are the solutions reached based on EPA's objections.

**EPA Concern 1: Draft Permit Clear, Specific, and Measurable Terms – CFR §122.34(a):**

In response to concern 1, TCEQ carefully reviewed the existing general permit while preparing the draft 2018 general permit to address the MS4 Remand Rule. Terms that EPA is viewing as not clear, specific, and measurable were retained only where appropriate. For example, regarding "focused BMPs" as mentioned in Part II.D.4(a)(5) of the permit as described in Comment 1.3 below.

Furthermore, TCEQ updated the fact sheet in Parts III A. and IV.C to explain that during the second step (Step 2) of the process when the Notice of Intent (NOI)/Stormwater Management Program (SWMP) reviews are conducted, TCEQ will ensure that each MS4's permit terms and conditions are clear, specific, and measurable prior to public notice and approval.

**EPA Concern 2: Two-step General Permit CFR §122.28(d)(2)(ii) – Public Participation on revised SWMPs/Permit Modification (40 CFR §122.62, or §122.63):**

In response to concern 2, see TCEQ's response to examples in 2 and 2.2 below. TCEQ updated the fact sheet in Parts III A. and IV.C to explain that the approved SWMP is part of the MS4's permit.

**EPA Concern 3: Compliance Schedules 40 CFR § 122.47:**

In response to concern 3, see TCEQ's response to examples in 3.1 and 3.2 below.

**EPA Concern 4: Sufficiently Sensitive Analytical Methods 40 CFR Part 136 and 40 CFR Chapter I, Subchapter N or O:**

In response to concern 4, the following sentence was added to the general permit in Part VI, Section E.1, Table 1: *“Analysis must be performed using sufficiently sensitive methods for analysis that comply with the rules located in 40 CFR §136.1(c) and 40 CFR §122.44(i)(1)(iv).”*

**Responses to Other Comments:**

**EPA Comment 1: Two-step General Permit – Authorization Approval Process – CFR 122.28(d)(2)(ii):**

In response to comment 1, TCEQ has chosen the two-step option (procedural approach) described in the MS4 Remand Rule. TCEQ selected this option since the state has managed its small MS4 program in a very similar manner since the issuance of the first TPDES Small MS4 General Permit in 2007. In order to clarify TCEQ’s process as a result of EPA’s comments, Part III.A and Part IV.C of the fact sheet and Part II.E.1 of the general permit were updated to explain TCEQ’s permitting process in more detail.

**EPA Comment 2: Streamlining; MOA Review of Permit Conditions Established in Step 2 - CWA Section 402(d), MOA Section IV.C.:**

In response to comment 2, TCEQ’s intent is to continue to manage its small MS4 program in the same manner as it did in the two previous general permit terms. If we are going to revise the MS4 process and include more specific permit requirements and conditions in the general permit, TCEQ intends to include stakeholders early in the renewal process to ensure that permittees are fully informed and are agreeable with the proposed program changes.

TCEQ agrees to work with EPA to streamline the Step 2 review process for the NOIs and SWMPs submitted by small MS4s.

**Responses to EPA Attachment:**

**EPA Comment 1: Clear, Specific, and Measurable Terms - CFR §122.34(a):**

In response to comment 1, TCEQ partially agrees with EPA’s comment and revised the draft general permit as described by EPA. Where appropriate, TCEQ continued to include some of the noted words/phrases. See examples in response 1.3 below:

**EPA Comment 1.1: Part II.D.4(a)(3) Identification of Benchmarks as Permit Conditions:**

In response to comment 1.1, as described above, benchmarks are not numeric effluent limitations. Benchmarks are designed to assist the permittees in determining if the Best Management Practices (BMPs) selected to minimize the pollutant(s) of concern are effective. The permit requires that the Waste Load Allocation (WLA) in a total maximum daily load (TMDL) – implementation plan (I-Plan) is chosen as the benchmark. In response to EPA’s comment, a definition for benchmarks was added to Part I of the permit as follows: *“**Benchmark** - A benchmark pollutant value is a guidance level indicator that helps determine the effectiveness of chosen best management practices (BMPs). This type of monitoring differs from “compliance monitoring” in that exceedances of the indicator or benchmark level are not permit violations, but rather indicators that can help identify problems at*

*the MS4 with exposed or unidentified pollutant sources; or control measures that are either not working correctly, whose effectiveness need to be re-considered, or that need to be supplemented with additional BMP(s)."*

**EPA Comment 1.2: Part II.D.4(a)(3)(a) Monitoring/Assessment Plan:**

In response to comment 1.2, Part II.D.4(a)(6) was revised to: "*The permittee shall develop a Monitoring/Assessment Plan to monitor or assess progress in achieving benchmarks and determine the effectiveness of BMPs, and ...*"

**EPA Comment 1.3: Part II.D.4(a)(5):**

In response to comment 1.3, the following statement "...the permittee shall include focused BMPs..." included in Part II.D.4(a)(5) of the permit was revised to: "...the permittee shall implement ~~include~~ focused BMPs..." TCEQ disagrees with removing the terms "as applicable" and "appropriate" since permittees only would need to implement BMPs relevant to their MS4; For example, an MS4 might not have any on-site sewage facilities, zoos or horse stables and would not need to address discharges from those sources, or if an MS4 has an I-Plan, it would choose appropriate BMPs from the I-Plan.

**EPA Comment 1.4: Part I.D.4(a)(6) Monitoring or Assessment of Progress:**

In response to comment 1.4, Part I.D.4(a)(6) of the permit requires the permittees to assess/monitor progress in achieving the benchmarks. The permittees can assess progress by describing activities that they have performed and that are mentioned in a(i) or the permittee can use existing water quality data sources as described in a(ii). If a permittee chooses to conduct sampling and analysis of water quality then this activity could be conducted either in the receiving waters or in the MS4's discharge.

**EPA Comment 1.5: Part I.D.4(a)(6) Monitoring or Assessment of Progress/Assessing Improvements in Water Quality:**

In response to comment 1.5, Part II.D.4(a)(6) of the permit was revised as follows: "*The permittee may use either of the following methods to evaluate progress towards the benchmark and improvements in water quality in achieving the water quality standards as follows:*"

**EPA Comment 1.6: Part I.D.4(b) Discharges Directly to Water Quality Impaired Water Bodies without an Approved TMDL - Impairment of Bacteria:**

In response to comment 1.6, Part II.D.4; Part II.D.4(b), Part II.E.6; Part II.E.16; Part III.A.2, and Part IV.B.2 were revised as suggested by EPA via e-mail on March 28, 2018. In addition, the one and two-year implementation schedule was removed in Part II.D.4(b)(1) to avoid extending compliance deadlines. If an impaired waterbody is newly listed during the general permit term, the permittee has two years from the approval date of the new list of impaired waters to comply with Part II.D.4(b) of the permit. As suggested by EPA, the language in the general permit is written in a manner that will not require a public notice for this permit requirement.

**EPA Comment 1.7: Part I.D.5 Discharge to the Edwards Aquifer Recharge Zone:**

In response to comment 1.7, Stormwater discharges to the Edwards Aquifer Recharge Zone are regulated under state rules, 30 TAC Chapter 213, in addition to meeting the requirements of the Phase II MS4 general permit. Permittees are required to operate under a TCEQ approved Water Pollution Abatement Plan (WPAP) as described in state rules. These state rules are outside the scope of the NPDES permitting program and therefore not applicable to the Phase II MS4 general permit. Additionally, the fact sheet was updated in Part III.A to explain this state requirement. No changes were made to the permit based on this comment.

**EPA Comment 1.8: Part I.E.6 SWMP Updates:**

In response to comment 1.8, changes that are made to the SWMP before the NOI is approved, can be submitted in a letter to TCEQ. TCEQ will then review the additional information along with the SWMP and NOI for technical completeness, before the authorization is issued and approved. Once the SWMP and NOI have been reviewed and preliminary approved, TCEQ prepares the public notice for the MS4 to publish to provide the public the option to comment on the NOI and the SWMP during a 30-day public comment period. In addition, the public notice informs the public how to request a public meeting. If comments are received, the TCEQ will prepare a response to the comments that will be mailed to the mailing list for the MS4, including those providing the comments if the authorization is ultimately issued.

Once an individual MS4 authorization is issued, if the MS4 has updates to the SWMP, the MS4 will submit a Notice of Change (NOC) to the TCEQ. The NOCs are reviewed and are either approved or denied by TCEQ as appropriate. See more explanation in response 2.

**EPA Comment 1.9: Part I.E.16(d) Public Notice Process for NOI submittal:**

In response to comment 1.9, Part II.E.6(d) of the permit describes that the public notice includes the opportunity for the public to request a public meeting. Furthermore, TCEQ is adding the following language to address public meeting versus public hearing. The following will be included in the general permit and fact sheet regarding the public meeting:

“...public meeting (equivalent to a “public hearing” as required by 40 CFR 122.28(d)(2)(ii)).”

**EPA Comment 2: Draft Permit Two-step General Permit CFR §122. 28(d)(2)(ii) - Public Participation on revised SWMPs/Permit Modification (40 CFR §122.62, or §122.63):**

In response to comment 2, based on discussions with EPA, TCEQ intends to follow the formal modification process, subject to the requirements of 40 CFR §122.62 or 40 CFR §122.63, as applicable. If an MS4's proposed changes or amendments constitute a minor modification to its approved authorization, TCEQ will follow 40 CFR §122.63 and no public notice will be required. Per EPA's e-mail of April 16, 2018, the public notices for proposed changes or amendments to an MS4's permit subject to requirements of 40 CFR §122.63 can be posted on the web. TCEQ's proposed process will be to request that the MS4s post the public notice on the MS4's website, along with the NOC and revised SWMP for any proposed changes submitted by MS4s classified as a major permit modification. If the MS4 does not have a website, then the TCEQ will post the public notice and other documentation on TCEQ's website.

The public notice for the original Notice of Intent of each MS4 will include the link to the MS4's or the TCEQ website to provide the public with notice of where the public may view the SWMP and public notices for any notices of change that are subject to the requirements of 40 CFR §122.62.

TCEQ updated the permit in Part II.E.6 and the fact sheet in Parts I.1 and IX.6 to reflect this public notice process for notices of changes submitted by MS4s.

**EPA Comment 2.1: Part II.D.4 Impaired Water Bodies and Total Maximum Daily Load (TMDL):**

In response to the comment 2.1, Parts II.D(4), II.E.6, II.E.16, III.A.2, and IV.B.2 were revised as suggested via e-mail by EPA on March 28, 2018.

**EPA Comment 2.2: Part II.D.4(a)(3):**

In response to comment 2.2, MS4s are required to conduct an annual evaluation of their BMPs addressing pollutants of concern. The evaluation is reported in the annual report and the evaluation may result in the MS4 replacing or changing ineffective BMPs. If this occurs, the notification to TCEQ would follow the NOC process described in the MS4 general permit. The general permit includes: 1) a list of changes that do not require an NOC; 2) a list of changes that require an NOC without public notice; and 3) a list of changes that require an NOC and public notice on the website. To notify the public of major modifications to a SWMP, TCEQ plans to require the MS4s to post the public notices on the MS4's website, or if the MS4 does not have a website, TCEQ will post the public notice on TCEQ's website. Also see response to comment 2.

**EPA Comment 2.3: Part I.D.4(a)(7) Observing No Progress Towards the Benchmark:**

In response to comment 2.3, see the responses to Comments 2 and 2.2, above.

**EPA Comment 2.4: Part I.D.4(b) Discharges Directly to Water Quality Impaired Water Bodies without an Approved TMDL - Discharging a Pollutant of Concern**

In response to comment 2.4, see responses to Comments 2 and 2.2, above.

**EPA Comment 2.5: Part I.D.5 Discharge to the Edwards Aquifer Recharge Zone:**

In response to comment 2.5, TCEQ disagrees with EPA's comment since this provision is not relevant to the MS4 Remand Rule. Discharges to the Edwards Aquifer Recharge zone are regulated by state rules, 30 TAC Chapter 213, and those rules are outside the scope of the NPDES permitting program. See also response 1.7. In response to EPA's comment, the fact sheet was updated in Part III.A to explain this state requirement. No changes were made to the permit based on this comment.

**EPA Comment 2.6: Part I.E.5 SWMP Updates Required by TCEQ:**

In response to comment 2.6, see response to Comment 2, above.

**EPA Comment 2.7: Part I.E.6 SWMP Updates:**

In response to comment 2.7, Part II.E.6 was revised based on EPA's suggested language provided via e-mail on March 28, 2018. Also, see response to Comments 2, 2.1, and 2.2, above.

**EPA Comment 2.8: Part I.E.7 Transfer of Ownership, Operational Authority, or Responsibility for SWMP Implementation:**

In response to comment 2.8, MS4s acquiring or annexing new areas under their ownership or control need to implement their SWMP in new areas within three years as described in Part II.E.7 of the permit and in Part IX.5 of the fact sheet.

TCEQ also added a paragraph in Part III of the permit stating that the SWMP must be implemented and enforced in new areas added during the permit term. As suggested by EPA, the language in the general permit is written in a manner that will not require a public notice for this permit requirement.

**EPA Comment 3: Draft Permit the proposed permit extends several compliance schedules:** To ensure permittees are not provided additional time to comply with requirements of previously issued iterations of this permit, language in the general permit needs to be modified. Below are some examples:

**EPA Comment 3.1: Part I.D.4(b) Discharges Directly to Water Quality Impaired Water Bodies without an Approved TMDL - Discharging a Pollutant of Concern:**

In response to comment 3.1, the permit was revised based on recommended language provided by EPA via e-mail on March 28, 2018.

**EPA Comment 3.2: Part I.E.3 SWMP General Requirements:**


In response to comment 3.2, many of the MS4 programs are ongoing and will continue during multiple permit terms. Therefore, the language in Part II.E.3 of the permit is still applicable and valid. In addition, TCEQ's internal checklist will be updated prior to starting the reviews of NOI/SWMPs under the renewed general permit to address any new requirements and compliance schedules.

**EPA Comment 3.3: Part III.A.1(b) Implementation of the SWMP:**

In response to comment 3.3, the referenced paragraph in EPA's comments, requires small MS4s to implement all *new requirements* during the next five-year permit term that begins once the permit is issued. The MS4s are allowed the flexibility to schedule the implementation of these new requirements in a stepwise manner during the five-year general permit cycle and the implementation should be done *as soon as practical*. *Ongoing* activities will continue as in the previous permit term, and are not included in this referenced paragraph. No changes were made to the permit to address EPA's comment.

Based on the revisions discussed above, EPA withdraws its objection to the issuance of TPDES Permit No. TXR040000. Thank you for your cooperation in resolving the above issues. Should you have any questions concerning these comments, please call me at (214) 665-7170, or have your staff contact Greg Valentine at (214) 665-3111, or by email to [valentine.greg@epa.gov](mailto:valentine.greg@epa.gov).

Sincerely,

  
for Stacey B. Dwyer, P.E.  
Associate Director  
NPDES Permits and TMDLs Branch

cc (electronic): Rebecca Villalba, Stormwater and Pretreatment Team Leader (MC-148)  
Wastewater Permitting Section Division, TCEQ

